

# CITY OF VIRGINIA BEACH AGRICULTURAL RESERVE PROGRAM FACT SHEET

The City of Virginia Beach enacted the Agricultural Lands Preservation Ordinance and the Virginia Beach Agricultural Reserve Program (ARP) on May 9, 1995. The program was designed and promoted by a coalition of farm, conservation, business, and civic interests. There was common concern for resource and growth management, as well as preservation of agri-business and a balanced tax base. Virginia Beach's program is very successful and is the leading program in the Commonwealth. The program is recognized at both the national and international level for conserving our natural resources, protecting the rural character and heritage of southern Virginia Beach and preserving the agriculture land base of the City's third largest industry.

The goal of the program is to preserve and protect over 20,000 acres of farm and forested lands through perpetual easements. The protected land base will ensure that farm and forested lands will be available for future generations to maintain a viable agricultural industry for the City. The estimated economic impact of agricultural products grown in Virginia Beach total \$87,684,372.61 for 2006.

Currently, there are over 7,260 acres enrolled in ARP. By preventing development in the southern part of the City, tremendous savings are realized by offsetting infrastructure costs. ARP prevents the need for new roads and improvements, public services such as police, fire and EMS, new schools, libraries, and trash collection. According to American Farmland Trust, Cost of Community Services studies conducted over the last 20 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses. The median Cost of Community Services results show that for every \$1.00 collected in real estate tax, \$1.19 is spent for city services on residential land use and only \$0.37 on working and open lands. Agricultural lands require very few city services and generate positive tax revenue, thus subsidizing the residential development.

The ARP is a voluntary program administered by the City's Department of Agriculture and the Agricultural Advisory Commission. Farm and forested lands in designated areas of the City are eligible to apply. A fair market appraisal is completed on eligible property. The purchase price offer is based on the fair market value of the property, less the agricultural value of the land since the landowner retains ownership, keeping the property on the tax roll. Final approval is determined by the City Council.

Once approved, the landowner is paid through an innovative financial tool called an installment purchase agreement, IPA. The City purchases a U.S. Treasury Strip in the amount of the purchase price of the easement, which will mature in 25 years. The City's cost of the treasury strip is generally 30 to 35 cents on the dollar. As an incentive for the landowner to wait for the principal payment to mature, the City pays the landowner semi-annual tax free interest on the amount for 25 years. At the treasury strips' maturity, the landowner is paid the principal amount of the easement value in a lump sum payment. This program allows the City to leverage its funds over time and gives the land owner a stream of tax free income which may be invested in the farm business, or as the owner desires and defers the payment of capital gains on the principal value. It is important to remember that the deed of easement to protect the land is perpetual even though our payment plan has a duration of 25 years.

For more information, please contact Jenny McPherson, Agricultural Reserve Program Coordinator at 757-385-8637 or Virginia Beach Planning Director William J. Whitney, Jr., AICP, at 757-385-5801.

**Transfer of Development  
Rights in Virginia**

Environment Virginia  
Conference 2007  
April 12, 2007



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**What is TDR?**

- TDR is based upon the fact that land ownership consists of a "bundle of rights" that together make up "fee simple" ownership.
- TDR is a regulatory device to:
  - Preserve sensitive lands while compensating the landowner for such protection (restriction); and
  - Concentrate development in suitable areas.



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## What is TDR? (cont'd)

- A landowner sells the "development rights" and receives reimbursement for permanent restrictions that are then placed on the property.
- The buyer then transfers the "development rights" to another property and enjoys the benefit of increased density and more intensive development.
- Requires active and intense real estate market to be successful.



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## Road to TDR in Virginia

- Journey of more than 25 years.
- In early effort, Loudoun County used a "density transfer" program:
  - Density bonus if a developer would proffer to acquire permanent easements on land in designated farming areas.
- In 2006 local governments, the development industry, and the agricultural and environmental communities negotiated two pieces of legislation -- cluster zoning and TDR.
- TDR was less controversial - not mandated and met the needs of all parties involved.



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## What's in Virginia's TDR Law?

Section 15.2-2316.1 et seq.  
Code of Virginia



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### Definitions

- “Development rights” – the permitted uses and density of development that are allowed on the sending property under any zoning ordinance **on a date prescribed by the ordinance.** [New Language]



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### Definitions

- “Sending property” – a parcel that a locality decides to limit future development in accordance with the adopted TDR ordinance **or a receiving property that has received development rights from a sending property.** [New Language]



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### Definitions

- “Receiving property” – a parcel within which development rights (e.g., density) are increased by a transfer of development rights.
  - A receiving property must be (i) appropriate and suitable for proposed development; and (ii) sufficient to accommodate the transferable development rights of the sending property.



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**What is Required of a Local TDR Program in Virginia?**

- Amend comprehensive plan to show –
  - TDR sending and receiving areas; and
  - Any parcels in the receiving area inappropriate as receiving properties.
- Adopt a TDR ordinance
  - After advertised public hearing.
  - To establish procedures, methods, and standards for TDR.



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**What is Required of a Local TDR Program in Virginia?**

- Determine the permitted uses and maximum density in the receiving area.
- Determine the minimum size of sending property and minimum reduction in density that may be sold.



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**What is Required of a Local TDR Program in Virginia?**

- Assess the ability of the receiving area to accept increases in density.
- Describe plans to provided needed utility services in any receiving area.
- Establish a process to review, approve and monitor TDR.



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**Other Statutory Requirements**

- Each TDR approval must have a recorded legal document that severs development rights from a sending property and transfers those rights to a receiving property.



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**Other Statutory Requirements**

- Each TDR approval must also have a recorded legal document assuring that the character of the sending property is preserved and that binds the landowner against the use and development of that property in perpetuity.
  - Example: Conservation Easement



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**Other Statutory Requirements**

- Any proposed TDR must be initiated by the property owners of both the sending and receiving properties.
  - "Proceed arm-in-arm to the courthouse."
- TDR cannot be a condition of the development of any property.



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**Other Statutory Requirements**

- Local governments may not change the uses or density permitted in the zoning district of any property where development rights have been transferred except in extraordinary circumstances.



Virginia Association of Counties

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**Other Statutory Requirements**

- Any TDR application is considered approved if determined to be –
  - In compliance with local ordinance; and
  - Instrument transferring the development rights is recorded.



Virginia Association of Counties

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**Optional Provisions of Local Program**

- May allow for residential development rights to be converted into square footage of commercial, industrial or other uses on a receiving property.
- A county may designate eligible receiving areas within any adjacent town or city by agreement.



Virginia Association of Counties

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### Concerns With Current Law

- Creates different definition of vesting than in general vesting statute.
  - Vesting = time when land use approvals permanent and cannot be changed.
  - General statute – i) "significant affirmative governmental act"; ii) landowner "relies in good faith" on that act; and iii) "incurs extensive obligations or substantial expenses."
  - TDR vests only when approved and recorded.



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### Concerns With Current Law

- Must negotiate and commit to transfer before receiving governmental approval.
  - Time delay = uncertainty.
  - Difficult to determine accurate price for development rights.
  - Seller cannot add value by obtaining approval of development rights first, then selling to highest bidder.



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### Concerns With Current Law

- No ability to purchase and "bank" development rights for use at a later time or for larger development.
  - Who can be the bank?
  - Do property taxes need to be paid on the "deposits" held over time?



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### Concerns With Current Law

- May need incentives to encourage local government adoption.
  - Cannot collect cash proffers on land zoned as receiving area. [Solution? Broad impact fee authority]
- May need incentives to overcome political liabilities.
  - Prospect of increased density in receiving area may lead to NIMBY problem for elected official



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### For Further Information

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